

of occasions in the fall of 2014. Ex. 15 at 15. The local security office (LSO) conducted a personnel security interview (PSI) with the Individual in January 2016. Ex. 6. The PSI did not resolve the concerns arising from the Individual's use, purchase, and sale of Adderall or his admission that he had used marijuana, while possessing a security clearance from another agency. Consequently, in a May 2016 letter (Notification Letter), the LSO informed the Individual that it had reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. Ex. 1. Specifically, the Notification Letter stated that the LSO possessed information falling within the purview of the potentially disqualifying criterion set forth in the security regulations at 10 C.F.R. § 710.8, subsections (k) and (l) (Criteria K and L respectively).³ The Notification Letter also stated that the Individual's use of a controlled substance prohibited him from possessing an access authorization pursuant to the Bond Amendment, codified at 50 U.S.C. § 3343(b).

Upon his receipt of the Notification Letter, the Individual exercised his right under the Part 710 regulations to request an administrative review hearing, and I was appointed the Administrative Judge in the case. The LSO submitted six Exhibits (Exs. 1-6) into the record.⁴ At the hearing, the Individual presented his own testimony along with the testimony of his significant other (Significant Other), his supervisor (Supervisor) and a licensed therapist (Therapist) and submitted two Exhibits (Ex. A-B). *See* Transcript of Hearing, Case No. PSH-16-0062 ("Tr.").

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1998) ("clearly consistent with the national interest standard for granting security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

³ Criterion K describes information demonstrating that an individual has "[t]rafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law." 10 C.F.R. § 710.8(k). Criterion L refers to information that suggests that an individual has "[e]ngaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security." 10 C.F.R. § 710.8(l).

⁴ The LSO originally stated that it would submit seven Exhibits but subsequently decided not to submit proposed Exhibit 7 – an Office of Personnel Management Report regarding the Individual.

An individual must come forward with evidence to convince the DOE that restoring his access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his or her eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

B. Basis for the Administrative Judge’s Decision

In personnel security cases arising under Part 710, it is my role as the Administrative Judge to issue a decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person’s access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person’s access authorization eligibility in favor of the national security. *Id.* In considering these factors, the Administrative Judge also consults Adjudicative Guidelines that set forth a more comprehensive listing of relevant factors and considerations. *See* Revised Adjudicative Guidelines for Determining Eligibility for Access Classified Information, The White House (December 19, 2005) (Adjudicative Guidelines).

III. The Notification Letter and the Security Concerns at Issue

The LSO cites the Individual’s admissions in the QNSP and PSI that he had used, purchased and sold Adderall, a controlled substance as Criteria K and L derogatory information. It also cited the Individual’s use of marijuana as additional Criteria K and L derogatory information. Given these admissions, the LSO had sufficient ground to invoke both Criteria K and Criteria L. Use of an illegal drug or illegal use of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Adjudicative Guidelines, Guideline H, at ¶ 24. Conduct involving unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Adjudicative Guidelines, Guideline E, at ¶ 15.

In the Notification Letter, the LSO also cites the Bond Amendment as a grounds to disqualify the Individual from possessing a security clearance. The Bond Amendment provides that agencies “may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict.” 50 U.S.C. § 3343(b).

IV. Findings of Fact

In the summer of 2014, the Individual was an intern working for a contractor to another federal agency. Tr. at 68-69. As a requirement of that position, the Individual was granted a security clearance. Tr. at 69. When the Individual was informed that he had been granted a security clearance he was informed that he would be given a briefing about the security clearance. Tr. at 69. Despite the individual attempting to schedule the briefing, he did not receive any security briefing before he left his position in September 2014. Tr. at 69. When he left the position, he believed that his clearance had been terminated. Tr. at 70.

When he returned to college, the Individual enrolled in six classes, the maximum allowed, in order to complete a Bachelor's degree and a Master's degree. Tr. at 72. Additionally, the Individual was attempting to complete the original research project required for his Master's degree. Tr. at 72. He initially attempted to work more hours without sleep by using caffeinated drinks. In an attempt to remain awake longer, the Individual purchased two Adderall tablets from a friend. Tr. at 73-74. At his university, the selling and using of Adderall tablets were very common. Tr. at 73. Later, he found a prescription bottle containing Adderall in a classroom. Tr. at 74. Overall, the Individual believes that he consumed approximately 9-10 tablets during the period November 2014 to January 2015. Tr. at 76-77. He has not used Adderall since January 2015. Tr. at 75, 78.

The Individual became aware that one of his friends needed help in staying awake to complete coursework. The Individual sold this friend two tablets for \$10. Tr. at 75-76. He did not intend to profit by selling the tablets but did so because it was a standard practice at his university. Tr. at 73-74. The Individual testified that "it [selling Adderall] was just the standard interaction that people did when they were giving Adderall to someone else." Tr. at 75. He believes that his decision to sell two tablets of Adderall to his friend was "a really dumb idea" and that he did not intend to profit from the sale. He also provided his Significant Other several Adderall tablets. Tr. at 74. He disposed of all of his Adderall tablets in January 2015 because he did not want to use Adderall as a "crutch" and because he felt guilty for selling the two tablets. Tr. at 75. The Individual found that Adderall, while helping him to stay awake, did not enhance his performance. Tr. at 78-79.

The Individual used marijuana on two occasions in 2014. Tr. at 79. On both occasions, the Individual was at a friend's residence and he tried marijuana when it was offered to him. On one occasion, the Individual became ill after using the marijuana. On the other occasion, he did not feel any effect from the marijuana. Tr. at 80. After these two uses, the Individual had no desire to further use marijuana and never sought to purchase or sell marijuana. Tr. at 80-81.

In 2015, the Individual accepted a position at the DOE facility. He has been working at the DOE facility for approximately one year. When the Individual accepted his position at the DOE facility, the Individual he was informed that he would need a security clearance. Later he was surprised to discover that he had an active security clearance from his former internship. He subsequently received a security briefing at the DOE facility. In November 2015, the Individual was asked to

complete a Questionnaire for National Security Position (QNSP). Tr. at 81. In the QNSP, the Individual reported his involvement with Adderall and marijuana. Tr. at 81-82. In responding to the questions, the Individual did not believe that he needed to hide his involvement with Adderall and marijuana and believed that reporting this in the QNSP would be the best way for him to inform the DOE. Tr. at 82.

The Individual believes that he would not have used either Adderall or marijuana if he had known that his prior security clearance was still active. Tr. at 84. He now has a better understanding of his responsibilities as a clearance holder. Tr. at 85 As a result of his experience he believes that he could be an advocate against such conduct on a college campus. Tr. at 87. He no longer associates with anyone who uses illegal drugs. Tr. at 87.

The Significant Other has known the Individual for six years and in 2014 they began to date. Tr. at 45. In July 2015, they began to share the same residence. Tr. at 45. She met the Individual in college and in November 2014 both of them were studying to complete multiple degrees. Tr. at 46. Both of them attempted to use caffeine to try stay awake to complete course work and research. Tr. at 47. During this period, both were under a great deal of stress to complete their degree programs. Tr. at 47. Both tried to use caffeine to be awake longer to complete their courses and research. Tr. at 47. However, caffeine was not effective in helping them stay awake. Tr. at 47. At their university, the use and purchase of Adderall was a part of the campus culture. Tr. at 49-50. Because of caffeine's ineffectiveness the Individual decided to try Adderall. Tr. at 47. Many of the students at their university had prescriptions for Adderall and its use was increasingly becoming part of the university environment. Tr. at 47. The Individual purchased two tablets on two occasions from a friend, and the Significant Other and the Individual each consumed one tablet apiece on each occasion. Tr. at 47. When they used the Adderall they did not think about the illegality of their use but were motivated by their short-term motivation to complete their coursework. Tr. at 50-51.

The Significant Other also testified that after this use of Adderall, the Individual found a bottle containing 20 Adderall tablets. Tr. at 47-48. The Significant Other believes that the Individual sold one or two of these tablets. Tr. at 48. The Individual has told the Significant Other that he regretted the decision to keep the bottle of Adderall he found. Tr. at 48. Since January 2015, the Significant Other has not observed the Individual using Adderall. Tr. at 51. Since that time, the Individual and Significant Other no longer had the need to use Adderall despite the pressure of completing their course work. Tr. at 52-53. The Significant Other has not had any further discussions about using Adderall or marijuana. Tr. at 53.

According to the Significant Other, in 2014, the Individual was offered marijuana and used it on two occasions while visiting friends. Tr. at 54. On the first occasion that the Individual used marijuana he became ill. Tr. at 55. On the second occasion, the Individual did not feel any effect from the marijuana. Tr. at 55. The Significant Other testified that Marijuana is not a part of their lifestyle. The Individual has never sought marijuana nor attempted to purchase it. Tr. at 56. The friends that offered the Individual marijuana have moved away and their current friends do not use

marijuana. Tr. at 57. Their current lifestyle consists of outdoor activities and the Individual's work in rehabilitating a boat they purchased. Tr. at 57-58. The Significant Other characterized the Individual as a "by the book" follower of rules as demonstrated by the Individual's insistence that all repairs to the boat be performed in a careful and proper manner. Tr. at 58. The Significant Other is committed to support the Individual in maintaining a lifestyle consistent with the requirements of holding a security clearance. Tr. at 59.

The Individual's Supervisor testified that he first met the Individual in May 2015 and that the Individual began to work at the DOE facility in September 2015. Tr. at 11. He usually speaks to the Individual at least once a week. Tr. at 11. He finds the Individual to be reliable, diligent and self-motivated. The Individual is a "natural leader" and shows exceptionable ability. Tr. at 13-14. The Supervisor has given the Individual an exceptionable level of responsibility for an employee of his youthful age. Tr. at 14. He has no concerns regarding the Individual's ability to safeguard classified material and finds that the Individual is very reliable and trustworthy. Tr. at 17. In his observation of the Individual, he finds that the Individual is very attentive to rules at the workplace. Tr. at 17-18.

The Therapist testified that he conducted an evaluative examination of the Individual in July 2016 for substance abuse or dependency problems.⁵ Tr. at 28. After examining the Individual, the Therapist found no evidence that the Individual had any type of substance misuse problem. Tr. at 28. The Individual used Adderall to increase his performance and did not use it in an on-going basis or for recreational purposes. Tr. at 29-30. In explaining the Individual's involvement with Adderall in college, the Therapist believed that it was connected to the cultural atmosphere where use of Adderall was accepted and that questions regarding the illegality of its use were not considered. Tr. at 31-32. The Therapist believes that the Individual will not use Adderall or marijuana in the future. This conclusion is supported by the Therapist's assessment of the Individual's candor in completing the QNSP and the Individual's candor during the Therapist's examination as well as the Individual's personality trait suggesting obsessive-compulsiveness regarding rules and procedures. Tr. at 32-33. The Individual's methodical restoration of his boat is an example of this trait. Tr. at 35. The Therapist also believes that the Individual has internalized the realization that he made a "bad choice" regarding his prior involvement with illegal drugs. Tr. at 37.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c) and the Adjudicative Guidelines. After due deliberation, I have determined that the Individual's security clearance should be restored.

⁵ The Therapist has a Master's Degree in Counselling, is a Clinical Supervisor at a treatment facility, and is an adjunct professor in classes dealing with substance abuse. Ex. A.

A. Criterion K and the Bond Amendment

The Criterion K concerns center around the Individual's use of Adderall and marijuana. After considering the evidence, I find that the Individual has resolved the Criterion K concerns arising from his prior use of Adderall and marijuana. I found the Therapist's testimony convincing regarding his determination that the Individual's use of these substances was limited and that he does not suffers from any type of substance abuse or dependency pathology. Further, the Therapist opined that the risk of the Individual using these substances again is minimal. The Therapist's assessment is also supported by the testimony of the Individual's Significant Other establishing the unique circumstances leading to the Individual's use of Adderall and his isolated experimental use of marijuana. Additionally, the Individual submitted a report of the results of an October 2015 (post-employment) drug test which indicates no illegal drug use. Ex. B.

I find that the following mitigating factors are present with regard to the concerns raised by the Individual's illegal drug use. I find that the Individual's use of Adderall was prompted by unique circumstances, the need to complete his university course work and research, which are unlikely to be repeated. Further, his use of marijuana was isolated and limited. *See* Adjudicatory Guideline, Guideline H at ¶ 26(a). I find the hearing testimony sufficiently compelling to support a finding that the Individual has demonstrated an intent not to engage in such conduct in the future. The Individual has demonstrated an appropriate period of abstinence, has dissociated himself from associates who used illegal drugs, and no longer lives in the environment where his drug use occurred. *See* Adjudicatory Guideline, Guideline H at ¶ 26(b)(1), (2), and (3). Consequently, I find that the evidence presented at the hearing has resolved the Criterion K derogatory information recorded in the Notification Letter.

I also find that the Individual is not now a user of illegal drugs nor is an addict. I found the Therapist's testimony to this effect to be convincing. Consequently, the Bond Amendment does not operate in this case to prevent the Individual from having his clearance restored.

B. Criterion L

The Criterion L derogatory information consists of the Individual's admitted use of Adderall and marijuana. Additionally, Criterion L concerns are raised by the fact that on two occasions the Individual sold one tablet of Adderall to a friend. To the extent that Criterion L concerns are raised by the Individual's use of Adderall and marijuana, I find that the concerns are resolved as discussed above.

However, the Individual's selling of prescription Adderall represents a serious error in judgment and a disregard for law. The Individual's Therapist as well as the Individual's Significant Other provided testimony that the use and selling of Adderall at colleges represented a cultural norm of conduct. Even if this is true, such an explanation, by itself, does not fully resolve the Criterion L concern. Nonetheless, the record indicates that the Individual only sold one Adderall tablet twice to a friend for a relatively small amount of money. There is no evidence that the Individual sought

to make money with regard to these two transactions. I find that the Individual's conduct in selling Adderall was isolated. Further, I find that the Individual's relative youth, approximately 23 years old, is a mitigating factor along with his openness in disclosing his involvement to the LSO. I also find that the testimony supports Individual's expressed intent to refrain from any involvement with illegal drugs.

I also find that the following Adjudicatory Guideline mitigating factors apply to the Individual. The Individual's criminal activity with regard to Adderall and marijuana is unlikely to recur. Adjudicatory Guidelines, Guideline J at ¶ 32(a). I also find that the Individual has demonstrated evidence of successful rehabilitation as demonstrated by his cooperation with LSO officials in disclosing his prior conduct and his exemplary work history where the Individual has demonstrated good judgment and has carried out his employment assignments in a very responsible manner. Consequently, I find that the Individual has resolved the security concerns arising from the Criterion L derogatory information recorded in the Notification Letter.

VI. Conclusion

In the above analysis, I found that there was reliable information that raised substantial doubts regarding the Individual's eligibility for a security clearance under Criteria K and L of the Part 710 regulations and the Bond Amendment. After considering all of the relevant information, favorable and unfavorable, in a comprehensive, common-sense manner, including weighing all of the testimony and other evidence presented at the hearing, I find that the Individual has presented sufficient information to resolve the security concerns raised by the Criteria K and L derogatory information recorded in the Notification Letter and that the Individual is not barred by the Bond Amendment from possessing a security clearance. Thus, I conclude that restoring the Individual's suspended DOE access authorization "will not endanger the common defense and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Consequently, I find that the Individual's access authorization should be restored.

Richard A. Cronin, Jr.
Administrative Judge
Official of Hearings and Appeals

Date: September 29, 2016